

16D C.J.S. Constitutional Law § 2402

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

3. Public Facilities and Services

§ 2402. General standards and principles

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  4100, 4101, 4109 to 4111

The regulation of the use of public facilities and services must comply with due process under the standard of a rational basis as reasonably related to a legitimate governmental interest.

The right to access and use public facilities is a constitutionally protected liberty interest for due process purposes.¹ In contrast, establishing a due process protected property interest in a government service requires showing a legitimate claim of entitlement to that service, beyond a mere abstract need, desire, or unilateral expectation.² There is no affirmative duty under due process to provide services to the general public³ or to individuals, absent custody.⁴

For due process purposes, there is no fundamental right to public services,⁵ nor is there a fundamental right to access and use public facilities.⁶

The right to access and use public facilities is subject to a due process standard of protection for a rational basis, requiring a rational relationship to a legitimate governmental interest.⁷ It does not implicate the due process right to intrastate travel, since the right to travel has no bearing on access to a particular place.⁸ Standards governing access to or conduct in public facilities are subject to a due process vagueness analysis but need only meet a standard that the meaning would be understood by a person of reasonable intelligence⁹ and that it must not be arbitrary and capricious.¹⁰

When the regulation of public facilities and services amounts to a deprivation of a protected interest, due process safeguards are required,¹¹ as may require timely notice and an opportunity for a hearing,¹² but procedural safeguards are not required when the claimed interest is *de minimis*.¹³

Various rules, regulations, and ordinances, which restrict or forbid particular uses of certain public facilities and services, are permissible within due process constraints, including those applicable to such public facilities as office buildings,¹⁴ capitol buildings,¹⁵ community centers,¹⁶ court proceedings,¹⁷ libraries,¹⁸ walkways,¹⁹ lakes,²⁰ beaches,²¹ parks,²² pools,²³ recreational facilities,²⁴ concerts,²⁵ harbors,²⁶ public shelters or homeless shelters,²⁷ day care centers,²⁸ and stadiums.²⁹

CUMULATIVE SUPPLEMENT

Cases:

Assemblages clause of statute, which made it unlawful "to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds," was not impermissibly vague, in violation of due process, absent any claim that statute was vague with respect to coverage of college student's conduct in being arrested after displaying political sign on Supreme Court plaza grounds, or additional expressive acts he intended to carry out in plaza in future. U.S.C.A. Const. Amend. 5; 40 U.S.C.A. § 6135. *Hodge v. Talkin*, 799 F.3d 1145 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

1 U.S.—*Kennedy v. City Of Cincinnati*, 595 F.3d 327 (6th Cir. 2010); *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

Haw.—*Minton v. Quintal*, 131 Haw. 167, 317 P.3d 1 (2013), as corrected on other grounds, (Dec. 27, 2013).

Tex.—*Anthony v. State*, 209 S.W.3d 296 (Tex. App. Texarkana 2006).

Not right of abutting owner

The state's exercise or assertion of its property rights on state property does not implicate the procedural due process rights of an abutting property owner.

U.S.—*Hornbeak-Denton v. Myers*, 361 Fed. Appx. 684 (6th Cir. 2010).

2 U.S.—*Midkiff v. Adams County Regional Water District*, 409 F.3d 758, 2005 FED App. 0226P (6th Cir. 2005).

U.S.—*Ocean v. Kearney*, 123 F. Supp. 2d 618 (S.D. Fla. 2000).

Del.—*Morgan v. Powell*, 659 A.2d 1243 (Del. Fam. Ct. 1994).

No right to city services

U.S.—Pheasant Run Condominium Homes Ass'n v. City of Brookfield, 580 F. Supp. 2d 735 (E.D. Wis. 2008); Baugh v. City of Milwaukee, 823 F. Supp. 1452 (E.D. Wis. 1993), judgment aff'd, 41 F.3d 1510 (7th Cir. 1994).

No right to nonemergency police services

U.S.—Klimik v. Kent County Sheriff's Department, 91 Fed. Appx. 396 (6th Cir. 2004).

No right to emergency medical services

U.S.—Wright v. District of Columbia, 799 F. Supp. 2d 1 (D.D.C. 2011).

No right to rescue services

U.S.—Hottenstein v. City of Sea Isle City, 977 F. Supp. 2d 353 (D.N.J. 2013).

No duty to provide fire services

U.S.—Bush v. City of Utica, 948 F. Supp. 2d 246 (N.D. N.Y. 2013), aff'd, 558 Fed. Appx. 131 (2d Cir. 2014).

No right to basic public service

Ill.—Henderson v. Bradford, 168 Ill. App. 3d 777, 119 Ill. Dec. 596, 523 N.E.2d 64 (1st Dist. 1988).

4 U.S.—DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989); Association For Retarded Citizens of Texas v. Kavanagh, 483 U.S. 1057, 108 S. Ct. 44, 97 L. Ed. 2d 821 (1987); Jackson v. Schultz, 429 F.3d 586, 2005 FED App. 0448P (6th Cir. 2005); Thornton v. City of Pittsburgh, 777 F. Supp. 2d 946 (W.D. Pa. 2011).

Mass.—Williams v. Secretary of Executive Office of Human Services, 414 Mass. 551, 609 N.E.2d 447, 1 A.D.D. 949 (1993).

5 U.S.—Pheasant Run Condominium Homes Ass'n v. City of Brookfield, 580 F. Supp. 2d 735 (E.D. Wis. 2008).

6 U.S.—Neinast v. Board of Trustees of Columbus Metropolitan Library, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); Brown v. City of Michigan City, Indiana, 462 F.3d 720 (7th Cir. 2006).

Tex.—Anthony v. State, 209 S.W.3d 296 (Tex. App. Texarkana 2006).

7 U.S.—Neinast v. Board of Trustees of Columbus Metropolitan Library, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); Brown v. City of Michigan City, Indiana, 462 F.3d 720 (7th Cir. 2006).

N.C.—Standley v. Town of Woodfin, 186 N.C. App. 134, 650 S.E.2d 618 (2007), decision aff'd, 362 N.C. 328, 661 S.E.2d 728 (2008).

Tex.—Anthony v. State, 209 S.W.3d 296 (Tex. App. Texarkana 2006).

8 U.S.—Williams v. Town of Greenburgh, 535 F.3d 71 (2d Cir. 2008); Hannemann v. Southern Door County School Dist., 673 F.3d 746, 278 Ed. Law Rep. 70 (7th Cir. 2012).

9 U.S.—Milestone v. City of Monroe, Wis., 665 F.3d 774 (7th Cir. 2011); Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011).

N.Y.—Dua v. New York City Dept. of Parks and Recreation, 84 A.D.3d 596, 924 N.Y.S.2d 47 (1st Dep't 2011).

Library access restriction as vague

U.S.—Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67 (D.D.C. 2001).

Boardwalk vending ordinance facially void

U.S.—Hunt v. City of Los Angeles, 638 F.3d 703 (9th Cir. 2011).

10 U.S.—Milestone v. City of Monroe, Wis., 665 F.3d 774 (7th Cir. 2011); Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011).

11 U.S.—Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011).

12 U.S.—Datri v. Incorporated Village of Bellport, 307 Fed. Appx. 465 (2d Cir. 2008); Neinast v. Board of Trustees of Columbus Metropolitan Library, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); Royer ex rel. Estate of Royer v. City of Oak Grove, 374 F.3d 685 (8th Cir. 2004).

13 U.S.—Kennedy v. City Of Cincinnati, 595 F.3d 327 (6th Cir. 2010).

14 U.S.—Hannemann v. Southern Door County School Dist., 673 F.3d 746, 278 Ed. Law Rep. 70 (7th Cir. 2012).

- 15 U.S.—Copsey v. Swearingen, 36 F.3d 1336 (5th Cir. 1994).
16 U.S.—Williams v. Town of Greenburgh, 535 F.3d 71 (2d Cir. 2008).
17 Ohio—In re A.G., 139 Ohio St. 3d 572, 2014-Ohio-2597, 13 N.E.3d 1146 (2014).
18 U.S.—Hill v. Derrick, 240 Fed. Appx. 935 (3d Cir. 2007).
Limited access to county law library
Iowa—Security State Bank v. Taylor, 421 N.W.2d 877 (Iowa 1988).
19 U.S.—John v. City of San Antonio, 336 Fed. Appx. 411 (5th Cir. 2009).
20 U.S.—National Ass'n of Property Owners v. U. S., 499 F. Supp. 1223 (D. Minn. 1980),
judgment aff'd, 660 F.2d 1240 (8th Cir. 1981).
Wis.—State v. Village of Lake Delton, 93 Wis. 2d 78, 286 N.W.2d 622 (Ct. App. 1979).
21 U.S.—Magee v. City of South Padre Island, 463 Fed. Appx. 377 (5th Cir. 2012).
22 U.S.—Brown v. City of Michigan City, Indiana, 462 F.3d 720 (7th Cir. 2006); Catron v. City
of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011).
N.Y.—Dua v. New York City Dept. of Parks and Recreation, 84 A.D.3d 596, 924 N.Y.S.2d
47 (1st Dep't 2011).
National Forest System land
U.S.—U.S. v. Kalb, 234 F.3d 827 (3d Cir. 2000).
Ban of convicted sex offender
U.S.—Doe v. City of Lafayette, Ind., 377 F.3d 757, 40 A.L.R.6th 777 (7th Cir. 2004).
N.C.—Standley v. Town of Woodfin, 186 N.C. App. 134, 650 S.E.2d 618 (2007), decision
aff'd, 362 N.C. 328, 661 S.E.2d 728 (2008).
23 U.S.—Kennedy v. City Of Cincinnati, 595 F.3d 327 (6th Cir. 2010).
24 U.S.—Datri v. Incorporated Village of Bellport, 307 Fed. Appx. 465 (2d Cir. 2008).
25 U.S.—Willis v. Town Of Marshall, N.C., 426 F.3d 251 (4th Cir. 2005).
26 U.S.—Indiana Port Commission v. Bethlehem Steel Corp., 534 F. Supp. 858 (N.D. Ind. 1981),
judgment rev'd on other grounds, 702 F.2d 107 (7th Cir. 1983).
27 U.S.—Boykin v. Gray, 895 F. Supp. 2d 199 (D.D.C. 2012).
D.C.—Baltimore v. District of Columbia, 10 A.3d 1141 (D.C. 2011).
28 U.S.—Schneider v. Whaley, 417 F. Supp. 750 (S.D. N.Y. 1976), judgment modified on other
grounds, 541 F.2d 916 (2d Cir. 1976), adhered to, 548 F.2d 394 (2d Cir. 1976).
29 U.S.—Murdock v. City of Jacksonville, Fla., 361 F. Supp. 1083 (M.D. Fla. 1973).